

Dave Wood
P.O. Box 4833
Helena, MT 59604

SENATE JUDICIARY
BILL NO. 6
DATE 3/3/09
BILL NO. HB 287
February 25, 2009

HB-287 VIOLATES Montana's Constitution

House Bill 287 is a power monopoly, knee jerk reaction to the recent award of \$32,000.00 in damages to the City of Helena, against Yellowstone Petroleum Pipeline, in compensation for the removal of trees which were not contemplated by the original pipeline easement.

HB-287 is a dangerous bill, to both Civil and Constitutional rights and liberties, and to private property owners everywhere in the State of Montana.

HB-287 violates Montana Constitution ARTICLE II DECLARATION OF RIGHTS, Section 17 and Section 31:

Section 17. Due process of law. "No person shall be deprived of * * * property without due process of law." Emphasis ours.

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. "No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature."

The corporate power companies seek -- through this bill -- to expand their existing right-of-way contracts by increasing the burden on the servient right-of-way easements of record.

Foreign power companies -- new to Montana -- acquired these older easements from the old Montana Power Company, according to Northwestern's testimony at the hearing on HB-287, held on January 26, 2009. During this testimony, Mr. John Fitzpatrick, stated "older easements and rights-of-way grants" did not include the language in Section 1 of HB-287 (Attached).

Easement law is well established by statute and case law. The easements that the power companies acquired, years ago, recite -- unequivocally -- the rights of the dominant owner, and the burdens to the servient owners. HB-287 is superfluous legislation, if its only purpose is to restate those rights and burdens. However, if the secret agenda of HB-287 is to expand those burdens, then it is a flagrant usurpation of the property rights of the servient tenement owners.

Additionally, the HB-287 Fiscal Note fails to consider the anticipated litigation costs which will be associated with this legislation in the courts due to the Constitutional issues contained in this bill if passed.

I encourage you to vote against this treacherous attempt to put money in the pockets of the corporate power monopolies at the expense of the people of Montana.

HOUSE BILL NO. 287

INTRODUCED BY R. DRISCOLL, B. BECK, KEANE, TAYLOR, VILLA

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A UTILITY TO REMOVE OR ALTER VEGETATION OR OTHER MATERIAL WITHIN A UTILITY RIGHT-OF-WAY; PROVIDING THAT THE UTILITY PROVIDE NOTICE UNDER CERTAIN CIRCUMSTANCES; PROHIBITING A PERSON FROM DENYING ACCESS OR INTERFERING WITH A UTILITY'S REMOVAL OR ALTERATION ACTIVITIES; ~~ESTABLISHING A CIVIL PENALTY~~; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Authorization to remove vegetation or other materials from utility right-of-way -- notice -- prohibition.** (1) A utility, as defined in 69-5-102, may remove or alter any vegetation or other material within a utility right-of-way or easement if the utility:

(a) determines that the removal or alteration is reasonably necessary for the safe repair, use, operation, or maintenance of the utility's electricity or gas transmission or distribution facilities; and

(b) complies with the notice provisions of subsection (2).

(2) (a) Except as provided in subsection (2)(b), a utility shall provide an affected property owner with written notice at least 15 days prior to the removal or alteration of vegetation or other materials when the action is part of a preventative maintenance program for the utility's easements and rights-of-way. THE WRITTEN NOTICE MUST INCLUDE CONTACT INFORMATION FOR THE UTILITY AND THE PUBLIC SERVICE COMMISSION WHERE THE AFFECTED PROPERTY OWNER CAN RECEIVE INFORMATION REGARDING THE UTILITY'S RIGHT TO REMOVE OR ALTER ANY VEGETATION OR MATERIAL WITHIN A UTILITY RIGHT-OF-WAY OR EASEMENT.

(b) A utility is not required to give notice to an affected property owner when the removal or alteration of the vegetation or other materials is undertaken to alleviate an imminent threat to the safe and reliable operation of the utility's electricity or gas transmission or distribution facilities.

(3) An affected property owner may not deny access to or interfere with the activities of a utility to remove vegetation as provided in this section.

~~**NEW SECTION.** **Section 2. Civil penalty.** (1) A district court OF APPROPRIATE JURISDICTION may assess~~

1 ~~a civil penalty of not more than \$500 upon a person that violates the provisions of [section 1(3)].~~

2 ~~—— (2) An action under this section is not a bar to enforcement by injunction or other appropriate civil~~
3 ~~remedy.~~

4 ~~—— (3) The penalty provided for in subsection (1) is recoverable in an action brought by the utility. The action~~
5 ~~must be filed in the district court of the county in which the violation occurred.~~

6
7 NEW SECTION. Section 2. Codification instruction. ~~[Sections 1 and 2] are [SECTION 1]~~ IS intended
8 to be codified as an integral part of Title 69, and the provisions of Title 69 apply to ~~[sections 1 and 2]~~ [SECTION 1].

9
10 NEW SECTION. Section 3. Effective date. [This act] is effective July 1, 2009.

11 - END -



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill # HB0287

Title: Authorize utility tree trimming on right-of-way and easements

Primary Sponsor: Driscoll, Robyn

Status: As Introduced

- ☐ Significant Local Gov Impact ☐ Needs to be included in HB 2 ☐ Technical Concerns
☐ Included in the Executive Budget ☐ Significant Long-Term Impacts ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$0	\$0	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact: This bill has no fiscal impact to the state.

Sponsor's Initials

Date

Budget Director's Initials

Date